A (a child suing through his mother and litigation representative, Noor Shahizan bt Ajmi) v Kerajaan Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-21NCVC-7–01 OF 2023
GAN TECHIONG JC
6 MAY 2025

Tort — Negligence — Medical negligence — Plaintiff suffered severe brain damage due to delay in delivering during birth process — Plaintiff sued defendants for professional medical negligence — Plaintiff claimed damages — Plaintiff's expert argued that life expectancy was 44 years whilst defendants' expert argued that life expectancy was 29 years — Whether defendants were negligent — Whether Government of Malaysia vicariously liable — Whether plaintiff's life expectancy should be 29 or 44 years — Whether plaintiff entitled to pre-trial damages, special damages, general damages, future damages and aggravated damages

The plaintiff in the present case had suffered severe brain damage allegedly due to the delay in delivering him after it was decided that an emergency lower section caesarean section ('LSCS') was required. The plaintiff filed the present action (through his mother and litigation representative) against the defendants for professional medical negligence and claimed for pre-trial damages, special damages, general damages, future damages and aggravated damages. The third defendant was a medical officer in the Obstetrics and Gynaecology ('O&G') Department in Hospital Kuala Lumpur. At the material time, the third defendant was not a surgeon but he managed to perform the emergency LSCS on the plaintiff's mother to deliver the plaintiff into this world. The fourth defendant in the present case was the Head of the O&G Department. It ought to be noted that only the third defendant attended the court's hearing to testify and the fourth defendant was unable to attend court to testify because he had undergone brain surgery recently to remove brain tumour. On the issue of liability, the plaintiff's counsel contended that a baby must be delivered with a 30 minutes time frame, from the time it was decided that an LSCS was required to take the baby out surgically and the delay in delivering the plaintiff had caused him to suffer irreversible cerebral palsy. On the issue of life expectancy and quantum of damages, the defendants' expert opined, based on her clinical experience as well as medical literature, that the life expectancy of the plaintiff was 25 years, and the maximum was 29 years. As for multiplier, she opined that a multiplier of eight would be fair because a discount of 1/3 would be justified, to factor in contingencies which could reduce the life expectancy of the plaintiff. The plaintiff's expert on the other

hand contended that the life expectancy of the plaintiff was 44 years.

Held:

(1) The court found that there was no strict rule requiring the period known as decision-to-delivery interval ('DDI') to be within 30 minutes. It was a timeframe guideline recommended based on the opinion of experts and was also dependent on hospital feasibility. Whilst there was no doubt that generally the quicker a distressed baby in his/her mother's womb was delivered via an emergency LSCS surgery, the better it should be for both the mother and the baby, the neonatal outcome depended on multiple clinical factors. A distressed baby delivered within a 30 minutes DDI may still suffer brain damages while another distressed baby delivered after 30 minutes may turn out fine (see paras 20–21).

(2) The court found that: (a) the third defendant was aware from the medical records that the plaintiff's mother was suffering from pregnancy-induced hypertension and was therefore a high-risk patient for abruptio placenta; (b) the plaintiff's expert who was an experienced O&G consultant confirmed that given the clinical findings at the material time, it was necessary to perform an emergency LSCS surgery; and (c) the evidence of the plaintiff's expert convinced the court that it was feasible to perform an emergency LSCS surgery within 30 minutes at the material time because the operating theatre was adjacent to the labour ward. Thus, when considered with other evidence regarding the plaintiff's mother's hypertension, CTG data, etc, on a balance of probabilities, the third defendant ought to be held liable for negligence (see paras 22–24).

(3) From the third defendant's evidence of having to run to the top floor to obtain the approval of the head of the department, ie the fourth defendant, it was safe to infer that the fourth defendant was on duty at the material time. Unfortunately, he did not deem it necessary to rush down to the first floor together with the third defendant — who was a young medical officer in February 2010 — to attend to the plaintiff's mother. The second defendant was only a houseman at the material time. There was no evidence of any negligence on the part of the second defendant. On a balance of probabilities, the court found that the plaintiff had proven that the third defendant and the fourth defendant were negligent on 11 February 2010. Since two doctors who were serving in a governmental hospital were found liable, the court held the Government of Malaysia (the first defendant) vicariously liable (see paras 8 & 25–26).

(4) In relation to life expectancy, both experts relied heavily on research data from USA published by Jordan C Brooks et al ('the Brooks report/study'). The court found that Table 3 of the Brooks report only showed that the plaintiff, at the age of 15, had a chance of surviving for another 14 years,

ie till the age of 29. The data in Table 3 did not allow the reader to extrapolate to add another 14 years after 30 years old, and to conclude that the plaintiff had a life expectancy of 44. Therefore, the plaintiff's expert had erred in relying on the Brooks study to extrapolate further to say 'Once he reaches 30 years old, his life expectancy would be up to 44 years old' because the probability of him surviving till 29 years was only 26%. In totality, after reading both reports and poring through the Brooks study, the court was constrained to rule that there was no basis whatsoever to support an extrapolation beyond 29 years as the life expectancy of the plaintiff (see paras 34, 47–48 & 52–53).

(5) The court accepted the expert report tendered by the defendants' expert as the cogent one to assist the court in deciding the life expectancy issue but the court would not apply the one-third deduction proposed by the defendants' expert in deciding the multiplier. It was the court's judgment that the court ought to use 29 years as the life expectancy of the plaintiff and a multiplier of 14 for the calculation of future damages (see paras 56–57).

(6) The court found that there was no evidence to support the plaintiff's plea for aggravated damages. As a matter of fact, the plaintiff waited more than 12 years to sue the defendants. Surely, the defendants would require time to dig up their old records and to contact the doctors who attended to the plaintiff's mother 12 long years ago. The plaintiff ought to be thankful that the defendants did not plead/pursue a statutory defence of limitation. Hence, the court rejected the plaintiff's claim for aggravated damages (see para 60).

(7) With respect to damages, the court awarded the following: (a) general damages of RM300,000 with interest at 5%pa from the date of the incident till the date of payment; (b) special damages of RM458,400 with interest at 5%pa from the date of the writ to the date of payment; and (c) pre-trial damages in the sum of RM51,300 and future general damages in the sum of RM1,476,790 with interest at 5%pa from the date of judgment, to be calculated till the date of payment (see paras 61–63).

[Bahasa Malaysia summary

Plaintif dalam kes semasa telah mengalami kecederaan otak yang teruk yang didakwa disebabkan oleh kelewatan dalam melahirkannya selepas diputuskan bahawa *lower section caesarean section* ('LSCS') kecemasan diperlukan. Plaintif memfailkan tindakan semasa (melalui ibunya dan wakil litigasi) terhadap defendan-defendan atas kecuaian perubatan profesional dan menuntut ganti rugi pra-perbicaraan, ganti rugi khas, ganti rugi am, ganti rugi masa hadapan dan ganti rugi teruk. Defendan ketiga merupakan seorang pegawai perubatan di Jabatan Obstetrik dan Ginekologi ('O&G') di Hospital Kuala Lumpur. Pada masa yang material, defendan ketiga bukanlah seorang pakar bedah tetapi dia

berjaya melakukan LSCS kecemasan ke atas ibu plaintif untuk melahirkan plaintif ke dunia ini. Defendan keempat dalam kes semasa ialah Ketua Jabatan O&G. Perlu diingatkan bahawa hanya defendan ketiga menghadiri perbicaraan mahkamah untuk memberi keterangan dan defendan keempat tidak dapat hadir ke mahkamah untuk memberi keterangan kerana dia telah menjalani pembedahan otak baru-baru ini untuk membuang tumor otak. Mengenai isu liabiliti, peguam plaintif berhujah bahawa bayi haruslah dilahirkan dalam tempoh masa 30 minit, dari masa diputuskan bahawa LSCS diperlukan untuk mengeluarkan bayi tersebut melalui pembedahan dan kelewatan dalam melahirkan plaintif telah menyebabkan dia mengalami cerebral palsy yang tidak dapat dipulihkan. Mengenai isu jangka hayat dan kuantum ganti rugi, pakar defendan-defendan berpendapat, berdasarkan pengalaman klinikal serta literatur perubatannya, bahawa jangka hayat plaintif ialah 25 tahun, dan maksimum jangka hayatnya ialah 29 tahun. Bagi pengganda, beliau berpendapat bahawa penggandaan lapan adalah adil kerana diskaun sebanyak 1/3 adalah wajar, untuk mengambil kira kontingensi yang boleh mengurangkan jangka hayat plaintif. Pakar plaintif sebaliknya berpendapat bahawa jangka hayat plaintif ialah 44 tahun.

Diputuskan:

(1) Mahkamah mendapati tiada peraturan ketat yang memerlukan tempoh yang dikenali sebagai 'decision-to-delivery interval' ('DDI') adalah dalam tempoh 30 minit. Ia adalah garis panduan jangka masa yang disyorkan berdasarkan pendapat pakar dan juga bergantung pada kemampuan hospital. Walaupun tidak ada keraguan bahawa secara amnya lebih cepat bayi yang tertekan dalam rahim ibunya dilahirkan melalui pembedahan LSCS kecemasan, lebih baik ia sepatutnya untuk ibu dan bayi tersebut, namun, hasil neonatal bergantung pada pelbagai faktor klinikal. Bayi yang dalam keadaan tertekan yang dilahirkan dalam masa 30 minit DDI mungkin masih mengalami kecederaan otak manakala seorang bayi lain yang dalam keadaan tertekan yang dilahirkan selepas 30 minit mungkin dalam keadaan yang baik-baik sahaja (lihat perenggan 20–21).

(2) Mahkamah mendapati bahawa: (a) defendan ketiga sedar daripada rekod perubatan bahawa ibu plaintif menghidap hipertensi yang disebabkan oleh kehamilan dan oleh itu merupakan pesakit berisiko tinggi untuk abruptio placenta; (b) pakar plaintif yang merupakan perunding O&G berpengalaman mengesahkan bahawa berdasarkan penemuan klinikal pada masa yang material, adalah perlu untuk melakukan pembedahan LSCS kecemasan; dan (c) keterangan pakar plaintif meyakinkan mahkamah bahawa pembedahan LSCS kecemasan boleh dilakukan dalam masa 30 minit pada masa yang material kerana 'operating theatre' terletak bersebelahan dengan 'labour ward'. Oleh itu, apabila dipertimbangkan dengan keterangan lain mengenai hipertensi ibu

plaintif, data CTG, dsb, atas imbangan kebarangkalian, defendan ketiga sepatutnya bertanggungjawab atas kecuaian (lihat perenggan 22–24).

(3) Daripada keterangan defendan ketiga yang menyatakan bahawa dia terpaksa berlari ke tingkat atas untuk mendapatkan kelulusan ketua jabatan, iaitu defendan keempat, adalah selamat untuk membuat kesimpulan bahawa defendan keempat sedang bertugas pada masa yang material. Malangnya, dia tidak menganggap perlu untuk bergegas turun ke tingkat satu bersama-sama dengan defendan ketiga — yang merupakan pegawai perubatan muda pada Februari 2010 — untuk merawat ibu plaintif. Defendan kedua hanya seorang 'houseman' pada masa yang material. Tidak terdapat keterangan tentang apa-apa kecuaian di pihak defendan kedua. Di atas imbangan kebarangkalian, mahkamah mendapati bahawa plaintif telah membuktikan bahawa defendan ketiga dan defendan keempat cuai pada 11 Februari 2010. Memandangkan dua doktor yang berkhidmat di hospital kerajaan didapati bertanggungjawab, mahkamah memutuskan bahawa Kerajaan Malaysia (defendan pertama) bertanggungjawab secara vikarius (lihat perenggan 8 & 25–26).

(4) Berhubung dengan jangka hayat, kedua-dua pakar sangat bergantung pada data penyelidikan dari Amerika Syarikat yang diterbitkan oleh Jordan C Brooks et al ('laporan/kajian Brooks'). Mahkamah mendapati Jadual 3 Laporan Brooks hanya menunjukkan bahawa plaintif, pada usia 15 tahun, mempunyai peluang untuk bertahan selama 14 tahun lagi, iaitu sehingga umur 29 tahun. Data dalam Jadual 3 tidak membenarkan pembaca untuk mengekstrapolasi untuk menambah 14 tahun lagi selepas 30 tahun, dan membuat kesimpulan bahawa plaintif mempunyai jangka hayat 44. Oleh itu, pakar plaintif telah terkhilaf dalam bergantung kepada kajian Brooks untuk mengekstrapolasi lebih lanjut dengan mengatakan 'Apabila dia mencapai umur 30 tahun, jangka hayatnya akan mencapai sehingga 44 tahun' kerana kebarangkalian dia bertahan sehingga 29 tahun adalah hanya 26%. Secara keseluruhannya, selepas membaca kedua-dua laporan dan meneliti kajian Brooks, mahkamah tiada pilihan lain selain untuk memutuskan bahawa tidak ada apa-apa asas langsung untuk menyokong ekstrapolasi melebihi 29 tahun sebagai jangka hayat plaintif (lihat perenggan 34, 47–48 & 52–53).

(5) Mahkamah menerima laporan pakar yang dikemukakan oleh pakar defendan-defendan sebagai laporan yang meyakinkan untuk membantu mahkamah memutuskan isu jangka hayat tetapi mahkamah tidak akan menggunakan potongan satu pertiga yang dicadangkan oleh pakar defendan-defendan dalam memutuskan penggandaan. Mahkamah memutuskan bahawa mahkamah harus menggunakan 29 tahun sebagai jangka hayat plaintif dan gandaan 14 untuk pengiraan ganti rugi masa hadapan (lihat perenggan 56–57).

(6) Mahkamah mendapati bahawa tiada keterangan untuk menyokong

permohonan plaintif untuk ganti rugi teruk. Hakikatnya, plaintif menunggu lebih 12 tahun untuk menyaman defendan-defendan. Pastinya, defendan-defendan memerlukan masa untuk mencari rekod lama mereka dan menghubungi doktor-doktor yang merawat ibu plaintif 12 tahun yang lalu. Plaintif sepatutnya bersyukur kerana defendan-defendan tidak memplid/membangkitkan pembelaan berkanun mengenai had masa. Oleh itu, mahkamah menolak tuntutan plaintif untuk ganti rugi teruk (lihat perenggan 60).

(7) Berkenaan dengan ganti rugi, mahkamah menganugerahkan yang berikut: (a) ganti rugi am sebanyak RM300,000 dengan faedah 5% setahun dari tarikh kejadian sehingga tarikh pembayaran; (b) ganti rugi khas RM458,400 dengan faedah 5% setahun dari tarikh writ hingga tarikh pembayaran; dan (c) ganti rugi praperbicaraan berjumlah RM51,300 dan ganti rugi am masa hadapan berjumlah RM1,476,790 dengan faedah 5% setahun dari tarikh penghakiman, yang akan dikira sehingga tarikh pembayaran (lihat perenggan 61–63).]

Cases referred to

Dr Jerilee Mariam Khong & Ors v Yusnita bt Johari (menyaman melalui suami dan wakil litigasi, Khairil Faiz bin Rahamat) [2025] MLJU 2274; [2025] CLJU 1819, CA (folld)

Inas Faiqah bt Mohd Helmi (an infant suing through her father and next friend, Mohd Helmi bin Abdul Aziz) v Kerajaan Malaysia & Ors [2015] 3 MLJ 498, CA (refd)

Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal [2018] 1 MLJ 784, CA (refd)

Karhti Kanthabalan (with Abigail Sarah Kumar) (PS Ranjan & Co) for the plaintiff.

Masriwani bt Mahmud (Senior Federal Counsel, Attorney General's Chamber) for the defendants.

Gan Techiong JC:

INTRODUCTION

[1] The plaintiff in this case was born in Hospital Kuala Lumpur on 11 February 2010. This action was filed through his mother and litigation representative on 11 January 2023.

[2] In his amended statement of claim, the plaintiff alleged professional medical negligence on the part of the defendants as the cause of his having suffered severe brain damage.

[3] The defendants are represented by the Attorney General of Malaysia, whose chambers filed their statement of defence and sent a federal counsel to appear for them during the trial of this action.

[4] Learned counsel for the plaintiff conceded that the fifth to ninth defendants should not be held liable.

[5] On the issue of liability of the remaining defendants, the plaintiff called a senior obstetrics and gynaecology ('O&G') consultant ('Dr Milton Lum') to give expert evidence.

[6] For the defendants, only the third defendant, namely Dr Tan Chong Seong, testified as a witness of facts on the issue of liability. The fourth defendant Dato' Dr Ravindran Jegasothy did not attend court to give evidence. No expert was called by the defendant to testify on the issue of liability. The defendants did call an expert witness to give evidence on the issue of life expectancy and quantum.

[7] In fairness to the third and fourth defendants respectively, I ought to mention two facts about them at the outset. First, the third defendant was a young medical officer in the Obstetrics and Gynaecology ('O&G') Department in Hospital Kuala Lumpur at the material time in February 2010. He was not a surgeon then but managed to perform an emergency surgery known as lower section caesarean section on the plaintiff's mother to deliver the plaintiff into this world. Secondly, the third defendant testified that the fourth defendant — who was the Head of the O&G Department at the material time — was unable to attend court to testify at the trial of this action because he had to undergo brain surgery recently to remove a brain tumour.

[8] The second defendant was only a houseman at the material time. There is no evidence of any negligence on the part of the second defendant. On a balance of probabilities, I find that the plaintiff has proven that the third defendant and fourth defendant were negligent on 11 February 2010. Since two doctors who were serving in a government hospital are found liable, this court holds the Government of Malaysia ('the first defendant') vicariously liable.

[9] As there is no appeal filed by the defendants, I shall not discuss the issue of liability in great detail. Instead, I shall explain in detail my reasons for accepting the defendants' expert evidence that, based on her clinical experience as well as medical literature, the *maximum life expectancy of the plaintiff* is *29 years*.

[10] Each side had called an expert witness to testify on the life expectancy of

the plaintiff and the amenities that he will require in the future. A table showing the items and quantum claimed by the plaintiff's learned counsel and the learned federal counsel's response respectively shall be attached hereto. The amount that this court is awarding as well as my reasons for arriving at the respective amount or for awarding a lesser amount or declining to make an award, are stated in the first column on the right of the table.

[11] There are many items for which this court is awarding as claimed by the plaintiff. However, some of the items claimed are, with respect, unjustified and/or exaggerated. Thus, this court is constrained to either refuse to award or reduce the quantum to be awarded.

THE PLAINTIFF'S CLAIM

[12] On the issue of liability, the plaintiff's main contention that the period known as decision-to-delivery interval should be within 30 minutes. The plaintiff contends that there were negligent delays in delivering him, which delays were caused as a result of both human errors and systems failure after cardiotocography ('CTG') monitoring of the plaintiff's mother had revealed an abnormal tracing. In short, learned counsel for the plaintiff contends that a baby must be delivered with a 30 minutes time frame, from the time it is decided that an emergency lower section caesarean section ('emergency LSCS') is required to take the baby out surgically, commonly known in layman terms as 'caesarean operation', and the delay in delivering the plaintiff had caused him to suffer irreversible cerebral palsy.

[13] In this case, the third defendant who was the medical officer on duty then, decided at 2.20pm that an emergency LSCS was required. However, it took him longer than 30 minutes to perform the surgery as he completed delivery of the plaintiff at 3.29pm.

[14] The plaintiff's learned counsel contends that *the plaintiff's life expectancy is 44*, based on medical literature and the report of the plaintiff's expert. By using a multiplier of 30, ie claiming future damages for the next 30 years, he worked out a massive claim as damages; for the past 14 years and for the next 30 years.

THE DEFENDANTS' DEFENCE

[15] In his evidence, the third defendant testified that placental separation in utero was suffered by the plaintiff's mother, ie whilst the plaintiff was still in his mother's womb, and that completing the LSCS surgery within 30 minutes would have made no difference. He explained that severe placental separation

had resulted in massive bleeding, and therefore irreversible brain damage to the plaintiff in utero.

[16] On the issue of life expectancy and quantum of damages, as mentioned above, the defendants' expert opined, based on her clinical experience as well as medical literature, that the *life expectancy of the plaintiff* is *25*, and the maximum is 29. As for the multiplier, she opines that a multiplier of eight would be fair because a discount of 1/3 would be justified, as was upheld by the Court of Appeal in *Inas Faiqah bt Mohd Helmi (an infant suing through her father and next friend, Mohd Helmi bin Abdul Aziz) v Kerajaan Malaysia & Ors* [2015] 3 MLJ 498 to factor in contingencies which can reduce the life expectancy of the plaintiff.

[17] The reasons and figures on quantum of damages submitted by the learned federal counsel are also stated in the aforesaid table which is attached hereto below.

FINDING ON LIABILITY

[18] As mentioned above, the fourth defendant — who was the Head of the O&G Department at the material time — was unable to attend court to testify at the trial of this action because he had to undergo brain surgery recently to remove a brain tumour. I had no reason to doubt this fact. Be that as it may, the evidence of the third defendant is that he — who was a young medical officer then — had to 'hold the fort' on that fateful day in February 2010 without any O&G consultant being present. The third defendant testified that he had to run up the stairs to the fourth defendant's office on the fourth floor to brief him and obtain the green light for him to perform an emergency LSCS on the plaintiff's mother.

[19] Even though the third defendant managed to perform the emergency LSCS successfully to deliver the plaintiff into this world, it was pointed out by the plaintiff's expert witness ('Dr Milton Lum') that the third defendant took much longer than 30 minutes.

[20] I find that there is no strict rule requiring the period known as decision-to-delivery interval ('DDI') to be within 30 minutes. It is a timeframe guideline recommended based on the opinion of experts and is also dependent on hospital feasibility. I take judicial notice that several professional bodies, such as the American College of Obstetricians and Gynecologists and Royal College of Obstetricians and Gynaecologists, recommend that 30 minutes timeframe guideline in urgent cases.

[21] Whilst there is no doubt that generally the quicker a distressed baby in

his/her mother's womb is delivered via an emergency LSCS surgery, the better it should be for both the mother and the baby, the neonatal outcome depends on multiple clinical factors. A distressed baby delivered within a 30 minutes DDI may still suffer brain damages while another distressed baby delivered after 30 minutes may turn out fine.

[22] The Court of Appeal in its very recent judgment in *Dr Jerilee Mariam Khong & Ors v Yusnita bt Johari (menyaman melalui suami dan wakil litigasi, Khairil Faiz bin Rahamat)* [2025] MLJU 2274; [2025] CLJU 1819 summed up the law on medical negligence in Malaysia. By applying *Dr Jerilee Mariam Khong* and the earlier authorities discussed therein to our present case, I find that the third and fourth defendants ought to be held liable due to the following reasons. First, the third defendant was aware from the medical records that the plaintiff's mother was suffering from pregnancy-induced hypertension and was therefore a high-risk patient for abruptio placenta. This view is as expressed by the plaintiff's expert Dr Lum during examination-in-chief. A screenshot from the notes of evidence is pasted below:

> KK: And what it's correlation to abruptio placenta?
>
> PW1: The correlation between a pregnancy-induced hypertension and abruptio placenta is found at page 17, at paragraph 85 of my opinion. Placenta abruption in layman's terms is premature separation of the placenta from the uterine wall where the placenta is attached before the person goes into labor. The conditions associated with placenta abruption can be chronic and these conditions are listed out in paragraph 85. In this instance, the patient had pregnancy-induced hypertension. The other causes did not apply to this particular patient.

[23] The plaintiff's expert ('Dr Milton Lum'), who is an experienced O&G consultant, had himself served at the O&G Department of Hospital Kuala Lumpur in the past, further confirmed that given the clinical findings then, it was necessary to perform an emergency LSCS surgery in any event unless the cervix is already opened for vaginal delivery to be performed. The said expert's evidence was as follows:

> PW1: When there is an abruptio placenta, if the cervix is almost opened up, you can attempt to deliver the baby vaginally. If the cervix is not opened up as in this case, then the mode of delivery will be C-section. This blood results on top of page 135 would help the doctor better manage the patient but the decision, the C-section has to be done irregardless of what the blood chemistry shows or what the mother's blood pressure is like. So, if the mother's blood pressure is high, as was noted, they have to give the mother drugs to bring the blood pressure down.

[24] The following part of the evidence of the plaintiff's expert ('Dr Milton Lum') further convinced me that it was feasible to perform an emergency LSCS surgery within 30 minutes at the material time as the operating theatre was adjacent to the labour ward. Thus, when considered with other evidence

regarding the plaintiff's mother's hypertension, CTG data, etcetera, on a balance of probabilities, the third defendant ought to be held liable for negligence. A screenshot of the expert's evidence is pasted below:

> Court: Was that the standard in the 1980s when you first became an O&G? What was the standard then, was it the same also, 30 minutes?
>
> PW1: My Lord, when I first started, there wasn't any standard, this standard came out maybe 2000 or thereabouts after discussion between the O&Gs and the anesthetists and the pediatrician in the United Kingdom and then it was internationally accepted. So, in my time, there wasn't this timeline. But looking back, we could have done a C-section and we had done C-sections during my time in less than 10 minutes or 15 minutes from the time the decision is taken because the operating theatre is just adjacent to the labor ward. So, it wasn't a great distance to travel but there had been occassions when we had to transfer the patient to the main operating theatre because the two operating theatres in the labor ward were occupied.

[25] From third defendant's evidence of having to run to the top floor to obtain the approval of the Head of Department, ie the fourth defendant, it is safe to infer that the fourth defendant was on duty at the material time. Unfortunately, he did not deem it necessary to rush down to the first floor together with the third defendant — who was a young medical officer in February 2010 — to attend to the plaintiff's mother.

[26] As mentioned above, on liability and causation, I concluded that the third defendant and fourth defendant are to be held liable.

FINDING ON LIFE EXPECTANCY

[27] The 'life expectancy' of the plaintiff is a key issue in the determination of the quantum of future damages because that figure will determine the multiplier to be used in computing future damages.

[28] This all-important issue of life expectancy of the plaintiff was dealt with in the testimony of the plaintiff's expert witness Dr Aishah bt Ahmad Fauzi as well as in the testimony of the defendant's expert witness Dr Ainilhawa bt Ibrahim. Both ladies have affirmed affidavits to exhibit their respective reports respectively.

[29] Both experts are specialists in Rehabilitation Medicine. The plaintiff's expert Dr Aishah currently works with a private company by the name of Daehan Rehabilitation Services Sdn Bhd. Her clinic is located in Hospital Putrajaya.

[30] As for the defendant's expert Dr Ainilhawa, she has been serving in the

Department of Rehabilitation Medicine, Hospital Tengku Ampuan Rahimah, Klang since March 2017.

[31] A clinical system known as the gross motor function classification system ('GMFCS') is a widely used five-level clinical system to classify the gross motor function of children and youth with cerebral palsy. Both experts agree that the plaintiff is categorised as a Level 5 GMFCS cerebral palsy patient, ie the most severe category as he is unable to do anything on his own; unable even to just lift his head on a prone position (when laid on his chest) and has to be tube-fed.

[32] An excerpt from the plaintiff's expert's report on life expectancy of the plaintiff is stated verbatim below so that I may explain why this court is constrained to reject the second part of Dr Aishah's opinion about the plaintiff's life expectancy of '44 years old':

> 2.2 Life expectancy
>
> Thus far, there are no studies available to investigate the survival
>
> trend and life expectancy of children with CP in Malaysia.
>
> Factors that significantly related to life expectancy in CP are:
>
> 1. Gross motor function I ambulation function
> 2. Feeding status (tube feed, feed by others or self-feed)
>
> FM's mobility and motor function are consistent with GMFCS V, in which he is total dependency on others for mobility even to turn himself. He need assistant in transfers and all aspects of activities of daily livings (ADLs). *Based on the available study by Brooks et.al on life expectancy for children with CP* at 4 years old, a CP child who does not lift head in prone position and tube fed, has the probability of 58% to survive up until 15 years old and 26% to survive up to 30 years old (Figure 3 — Table 11). FM is now 13 years old 5 months, which in less than 2 years will reach 15 years old.
>
> Once he reaches 15 years old, his life expectancy would be up to 29 years (cannot lift head and TF – additional 14 years). *Once he reaches, 30 years old, his life expectancy would be up to 44 years old (additional 14 years)* (Figure 4 — Table 111). Although this study population on CP survival was based in California, the healthcare provided for individuals with CP includes all medically indicated care and long-term services (housing, physical and occupational therapy, speech and language therapy) regardless of personal or family income. ... (Emphasis added.)

[33] Dr Ainilhawa ('the defendant's expert') also referred to the same medical literature 'Brooks et al Recent trends in cerebral palsy survival. Part II: individual survival prognosis. Developmental Medicine & Child Neurology 2014, 56: 1065–1071. DOI: 10.1111/dmcn.12519' to support her professional assessment of the plaintiff. The critical part of the defendant's

expert evidence is as follows:

> In another study by Brooks, it was found that children who are tube fed and who did not lift their heads when in the prone position (i.e. children with the most severe disability in GMFCS level V), the adjusted-to-2010 survival probabilities to ages 10, 20 and 30 years were 75%, 41%, and 26% and the median age at death is 17.1 years. 1t is thought that general life expectancy changes should not be used in most severe cases and no current justification for adding future life expectancy changes as they will mostly continue to apply to infancy and those over 40 years and far less in between. *Based on current literature, latest assessment, my clinical knowledge and experience, I think this patient will likely survive up to the age of 25 years old.*

[34] Both experts relied heavily on research data from USA published by Jordan C Brooks et al which was based on data collected over a 28-year period in California. However, the excerpts from the publication shown in the plaintiff's expert's report is not clearly legible. The copy of the said publication filed by the plaintiff's solicitors (encl 29 in the e-filing system) is also barely legible, as shown in the screenshot below:

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Table III: Life expectancy: additional years (standard error) for adolescents and adults with cerebral palsy[a]

	Cannot lift head			Lifts head or chest			Rolls/sits				
Sex/Age	TF	FBO	SF	TF	FBO	SF	TF	FBO	SF	Walks unaided[b]	General population
Female											
15y	14 (1.0)	18 (1.2)	–	18 (1.5)	23 (1.0)	–	27 (1.8)	37 (1.3)	48 (1.2)	55 (1.0)	66.2
30y	14 (0.9)	19 (1.2)	–	14 (0.8)	23 (1.1)	–	18 (1.8)	32 (1.2)	37 (0.8)	43 (0.7)	51.6
45y	12 (1.0)	14 (1.0)	–	12 (1.0)	17 (1.2)	–	12 (1.5)	21 (1.0)	25 (0.6)	29 (0.6)	37.4
60y	7 (0.8)	10 (1.4)	–	7 (0.8)	10 (1.1)	–	7 (0.8)	10 (0.8)	16 (0.5)	19 (0.7)	24.1
Male											
15y	14 (1.0)	18 (1.2)	–	18 (1.4)	23 (1.0)	–	27 (1.7)	33 (1.1)	45 (1.1)	52 (0.9)	61.4
30y	14 (0.9)	19 (1.2)	–	14 (0.8)	23 (1.1)	–	18 (1.7)	28 (1.1)	33 (0.7)	39 (0.6)	47.4
45y	12 (1.0)	14 (1.0)	–	12 (1.0)	17 (1.1)	–	12 (1.5)	18 (0.9)	22 (0.5)	25 (0.5)	33.5
60y	7 (0.8)	10 (1.4)	–	7 (0.8)	10 (1.1)	–	7 (0.8)	10 (0.8)	12 (0.4)	15 (0.5)	21.1

–, Results not shown because of small sample size. [a]As noted in the text, these life expectancies do not necessarily apply to younger children. [b]Life expectancies for the 'walks unaided' groups assume that individuals in the group will remain ambulatory until at least age 60.

[35] Thus, I had to look up the source of the said publication for a clearly legible copy to ensure a clear understanding of the same. Fortunately, in this day and age, it is possible to look up scientific publications online. After finding it published online in https://pubmed.ncbi.nlm.nih.gov/25041081/ which is the archive for National Library of Medicine, I checked the contents to ensure that it is indeed the same article cited by both experts, bearing the title: 'Recent trends in cerebral palsy survival. Part II: individual survival prognosis'. The researchers are Jordan C Brooks, David J Strauss, Robert M Shavelle, Linh M Tran, Lewis Rosenbloom and Yvonne W Wu, which were stated as 'Brooks et al' meaning Brooks and others. A complete copy of their paper (referred to by both experts ('the Brooks study') may be seen online by using this link: https://onlinelibrary.wiley.com/doi/10.1111/dmcn.12519

[36] For convenient reference, I shall paste screenshots of the relevant

passages and tables from the Brooks study, which is a report based on data collected over a 28-year period of children and youth with cerebral palsy ('CP') based in California, USA. At this juncture, it is pertinent to point out that the Brooks study show that the life expectancy of the general population in the state of California is 80 years old, as shown in the screenshot below:

health care in the UK. It is noteworthy, however, that the general population life expectancy in the state of California (also 80 years from birth26) is equivalent to the UK figure.

[37] This court takes judicial notice that the life expectancy of the general population in Malaysia is significantly lower than that of the general population of California, as could be seen in the following screenshot from the Department of Statistics of Malaysia. It shows that the life expectancy of those born in Malaysia in year 2012 is only 74.4 (versus 80 for the general population in California where the Brooks study was conducted):

MINISTRY OF ECONOMY
DEPARTMENT OF STATISTICS MALAYSIA

ABRIDGED LIFE TABLES, MALAYSIA, 2016-2018

INTRODUCTION

Abridged Life Tables, Malaysia, 2016-2018 contains the latest life tables by age, ethnic group and sex at Malaysia and state level. The life tables are generated based on the mortality statistics for the three-year period and mid-year population estimates.

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[38] The use of the GMFCS for classification in the said study is seen in the following passage of the Brooks study:

> The severity of motor disability was recorded for the following motor skills: head-lifting in the prone position, rolling, sitting, crawling, and walking. Using this motor function data, we classified individuals into one of five levels on the Gross Motor Function Classification System (GMFCS).

[39] It is pertinent to note that the Brooks study shows that the median age at death in tube-fed children who did not lift their heads in the prone position is 17.1 years. The median age before adjustment (as pointed out in the Brooks study) was only 14.6 years. The plaintiff is clearly in this category as he is tube-fed and unable to lift his head in the prone position, ie when laid on his chest). It is be noted that the Brooks study mentions adjusted survival probability which has been increased in California where the life expectancy is higher than in Malaysia. A screenshot of the relevant passage is pasted below:

> Unadjusted survival probability estimates, which do not account for improved mortality over the study period, are lower than the adjusted-to-2010 survival estimates. The largest difference in survival probabilities calculated by these two methods was observed in the children with the most severe disabilities. For example, in tube-fed children who did not lift their heads in the prone position, the unadjusted probabilities of survival to ages 10, 20, and 30 years were 68%, 33%, and 21%, respectively, and the median age at death was 14.6 years. The adjusted-to-2010 survival probabilities were 75%, 41%, and 26%, and the median age at death increased to 17.1 years.

[40] Next, it is noted that only 41% of the children with CP who are tube-fed and do not lift their head in the prone position survive to the age of 20 years old. This is in the following passage which explains Table 2 in the Brooks study:

Survival probabilities for children

The probabilities of survival from age 4 years to ages 10, 15, 20, 25, and 30 years are presented in Table 2. The survival probabilities that were adjusted to reflect mortality in 2010 indicate that most 4-year-old children with CP survive to age 20 years. An exception is children who are tube fed and who do not lift their heads when in the prone position (i.e. children with the most severe disability in GMFCS level V) of whom only 41% survive to age 20 years.

[41] The plaintiff is in the same category as those children with CP who are tube-fed and do not lift their head in the prone position. As pointed out above, only 41% of them survive to the age of 20 years old; less than 50% meaning that more than half of them would have passed away before the age of 20.

[42] Table 2 also shows the probabilities of children with CP who are tube-fed and do not lift their head in the prone position, ie the same as the plaintiff, surviving to 15 years old is 58%, ie more than 50% chance.

Table 2. Probability (%) that a 4-year-old child with cerebral palsy will survive to ages 10, 15, 20, 25, and 30 years

	n	Adjusted-to-2010					Unadjusted Kaplan–Meier				
		10	15	20	25	30	10	15	20	25	30
Does not lift head in the prone position											
Tube fed	482	75	58	41	31	26	68	48	33	25	21
Fed orally by others	615	85	73	56	47	43	80	66	51	43	39
Feeds self orally	50	97	90	90	–	–	95	88	88	–	–

[43] Since Table 2 shows the probabilities of surviving till the age of 15 is 58%, ie more than 50%, meaning that it is more likely than not. Hence, it is not surprising that the plaintiff is alive at the age of 15. However, it is noted that

the chances of his surviving to the age of 20 is only 41%, *and to the age of 30 is only 26%, far below 50%*.

[44] Learned counsel for the plaintiff has relied on Table 3 in the Brooks report to submit that there is a fair chance of the plaintiff surviving to the age of 44. A screenshot of the whole Table 3 is pasted below:

Table 3. Life expectancy: additional years (standard error) for adolescents and adults with cerebral palsy[a]

Sex/ Age	Cannot lift head			Lifts head or chest			Rolls/sits			Walks unaided[b]	General population
	TF	FBO	SF	TF	FBO	SF	TF	FBO	SF		
Female											
15y	14 (1.0)	18 (1.2)	–	18 (1.5)	23 (1.0)	–	27 (1.8)	37 (1.3)	48 (1.2)	55 (1.0)	66.2
30y	14 (0.9)	19 (1.2)	–	14 (0.8)	23 (1.1)	–	18 (1.8)	32 (1.2)	37 (0.8)	43 (0.7)	51.6
45y	12 (1.0)	14 (1.0)	–	12 (1.0)	17 (1.2)	–	12 (1.5)	21 (1.0)	25 (0.6)	29 (0.6)	37.4
60y	7 (0.8)	10 (1.4)	–	7 (0.8)	10 (1.1)	–	7 (0.8)	10 (0.8)	16 (0.5)	19 (0.7)	24.1
Male											
15y	14 (1.0)	18 (1.2)	–	18 (1.4)	23 (1.0)	–	27 (1.7)	33 (1.1)	45 (1.1)	52 (0.9)	61.4
30y	14 (0.9)	19 (1.2)	–	14 (0.8)	23 (1.1)	–	18 (1.7)	28 (1.1)	33 (0.7)	39 (0.6)	47.4
45y	12 (1.0)	14 (1.0)	–	12 (1.0)	17 (1.1)	–	12 (1.5)	18 (0.9)	22 (0.5)	25 (0.5)	33.5

[45] The abbreviations: TF means 'Tube-fed', 'FBO' means 'Fed by Others' while 'SF' means 'Self-Fed' which refer to CP children which are not in such severe condition as the plaintiff here. 'TF' is applicable to the plaintiff.

[46] As the above screenshot of Table 3 is legible but also contains data about CP children who are in better condition; who can lift their head or chest, roll and sit, and also those who can walk unaided, a clear legible screenshot of *the relevant part of the said Table 3*, ie the part referring to male CP at the age of 15 who cannot lift head and are tube-fed, is pasted below for easier reference:

Table 3. Life expectancy: additional years cerebral palsy[a]

Sex/ Age	Cannot lift head			Lifts head or chest	
	TF	FBO	SF	TF	FBO
Female					
15y	14 (1.0)	18 (1.2)	–	18 (1.5)	23 (1.0)
30y	14 (0.9)	19 (1.2)	–	14 (0.8)	23 (1.1)
45y	12 (1.0)	14 (1.0)	–	12 (1.0)	17 (1.2)
60y	7 (0.8)	10 (1.4)	–	7 (0.8)	10 (1.1)
Male					
15y	14	18	–	18	23

[47] As mentioned above, 'TF' is applicable to the plaintiff as he is tube-fed and cannot lift his head. All that Table 3 shows is that the plaintiff, at the age of 15, has a chance of surviving for another 14 years, ie till the age of 29.

[48] With respect, the data in Table 3 does NOT allow the reader to extrapolate to add another 14 years after 30 years old, and to conclude that the plaintiff has a life expectancy of 44.

[49] To recapitulate (see para 32 above), the plaintiff's expert had opined:

> Once he reaches 15 years old, his life expectancy would be up to 29 years (cannot lift head and TF — additional 14 years). *Once he reaches, 30 years old, his life expectancy would be up to 44 years old (additional 14 years)*.

[50] This court may and will accept the first statement in the plaintiff's expert report as quoted above: 'Once he reaches 15 years old, his life expectancy *would be up to 29 years* (cannot lift head and TF — additional 14 years)' because he was almost 15 years old at the date of the trial in 2024 — and therefore the reference to a CP person who is 15 years old is applicable to him. This statement is consistent with the opinion of the defendant's expert witness (Dr Ainilhawa).

[51] However, with respect, the plaintiff's expert's second statement is *unsupported* by her reference to the Brooks study, when she attempted to extrapolate by stating: '*Once he reaches 30 years old, his life expectancy would be up to 44 years old (additional 14 years)*'. This statement will be valid if she is assessing a patient who is already 29 years old. In our present case, the plaintiff was barely reaching the age of 15 during the trial. He had the odds of 58% for him to survive past the age of 15 — which has been proven accurate. However, the odds of him now surviving till the age of 20 is only 41%. *The probabilities of him surviving to the age of 29 is only 26%.*

[52] Therefore, with respect, the plaintiff's expert has erred in relying on the Brooks study to extrapolate further to say: '*Once he reaches 30 years old, his life expectancy would be up to 44 years old*' because *the probability of him surviving till 29 years old is only 26%.*

[53] When the plaintiff was brought to court in a pram during the trial, most of those present in court, including me who was sitting as the trial judge, could not help feeling sad for him. I have no doubt that both experts felt sympathy for the plaintiff too. However, with respect, it is incumbent upon us to detach ourselves emotionally when it comes to professional evaluation of this case. I bear in mind that damages to be awarded to the plaintiff must be in accordance with legal principles and not sympathy. There should be no unjust enrichment of the plaintiff at the expense of taxpayers of Malaysia. After reading both reports and poring through the Brooks study — which was heavily relied on by both experts — I am constrained to rule that there is no basis whatsoever to support an extrapolation beyond 29 years as the life expectancy of the plaintiff here. My reasons are as explained above.

[54] Learned counsel for the plaintiff has submitted that there had been cases where other learned judges had agreed with some experts' reports, which

were also based on the said Brooks study, and decided that the plaintiffs there had a much higher life expectancy. On this point, I respectfully state that it could have been because the facts of those cases were different or because clear legible excerpts from the Brooks study had not been made available to the court. As pointed out above in para 35, I had to search online for a clear legible copy of the whole Brooks study.

[55] On the plaintiff's life expectancy issue, I wish to add that Dr Ainilhawa had, based on her clinical experience and physical examination of the plaintiff and the data in Brooks study, formed her professional opinion that the plaintiff's life expectancy is 25 years. She did testify that the very maximum is 29. I have no doubt that she had considered the factors that could reduce the life expectancy of the plaintiff, such as epilepsy, risk of respiratory or lungs infections, etcetera.

[56] I would therefore humbly stand by my analysis of the facts and evidence, and accept the expert report tendered by the defendant's expert Dr Ainilhawa as the cogent one to assist me in deciding the life expectancy issue.

[57] However, this court will not apply the one-third (1/3) deduction proposed by the defendant's expert in deciding on the multiplier. It is my judgment that this court ought to use 29 years as the life expectancy of the plaintiff and *a multiplier of 14 for the calculation of future damages* — as shown in the table of damages below.

DAMAGES

[58] The plaintiff's learned counsel submitted that besides pre-trial damages, special damages, general damages and future damages, aggravated damages should also be allowed.

[59] It was held in *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784 that for aggravated damages to be justified — which is a species of compensatory damages awarded as additional compensation — there must have been intangible injuries to the interest or personality of the plaintiff exacerbated by the exceptional conduct of the defendant.

[60] I find that in this case, *there is no evidence to support the plaintiff's plea for aggravated damages*. As a matter of fact, the plaintiff waited more than 12 years to sue the defendants. Surely, the defendants would require time to dig up their old records and to contact the doctors who attended to the plaintiff's mother 12 long years ago. The plaintiff ought to be thankful that the defendants did

not plead/pursue a statutory defence of limitation. Hence, this court will reject the plaintiff's claim for aggravated damages.

CONCLUSION

[61] The *itemised details* of damages awarded and brief reasons are stated in the table attached hereinbelow, which also shows that this court has decided to award *general damages of RM300,000, special damages of RM458,400*, pre-trial damages of RM51,300 and *future general damages of RM1,476,790. The grand total of damages* awarded is *RM2,286,490.*

[62] As for interest, I am of the view that interest at 5%pa ought to be awarded on the *general damages* from the *date of the of the incident on 11 February 2010* till the date of payment because pain, suffering and loss of amenities of life were *suffered by the plaintiff from the time of the incident*. As for special damages which were incurred over a period of time prior to the late filing of the writ on 11 January 2023, interest at 5%pa ought to be awarded from the date of the writ to the date of payment.

[63] The plaintiff shall be receiving the judgment sum of *RM1,476,790* awarded as *future general damages* many years earlier than when payments would be incurred by the plaintiff (if at all). Thus, I am of the view that if interest is to be awarded from an earlier date on this sum of RM1,476,790, it would lead to unjust enrichment of the plaintiff at the expense of taxpayers of Malaysia. Therefore, this court should not award interest on future general damages from the date of the writ as prayed by the plaintiff's learned counsel. This court will therefore award interest at 5%pa on pre-trial damages and future general damages from the date of judgment, to be calculated till the date of payment.

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Table of Damages, Costs & Interests Awarded

No.	Item	Plaintiff (RM)	Defendants (RM)	Judgment & Reasons for disputed items (RM)
A.	**General Damages**			
1.	General damages for pain and suffering and the loss of amenities of life	500,000-00	300,000-00	300,000.00
2.	Aggravated damages	**1,000,000-00**	Not entitled	It was held in **Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur [2018] 1 MLJ 784** that for aggravated damages to be justified – which is a species of compensatory damages awarded as additional compensation – there must have been intangible injuries to the interest or personality of the plaintiff **exacerbated by the exceptional conduct of the defendant. There is no evidence to support the Plaintiff's plea for aggravated damages.** As a matter of fact, **the Plaintiff waited 11 years to sue the Defendants.** Surely, the Defendants would require time to dig up and peruse their old records after 11 years. The Defendants did not plead/pursue a statutory defence of limitation. There is no basis to claim aggravated damages. Hence, this Court disallowed the claim for aggravated damages.
	Total General Damages			**RM300,000.00 awarded**

B.	**Special Damages** from the date of the incident, 11 February 2010 until the date of filing of the claim, 11 January 2023 **(12 years 10 months = 154 months)**			
3.	the cost of hospital and medical expenses	105,600-00	Not entitled	This Court awarded only RM5,000 as nominal damages because the Plaintiff failed to adduce evidence to prove. As the Plaintiff's mother is working in Hospital Kuala Lumpur, the Plaintiff (as an OKU) has been receiving free treatment at government hospitals most of the time. Hence, nominal damages of RM5,000.00 should be more than sufficient to cover those odd occasions when payments were required.
4.	the cost of travel expenses	213,600-00	Not entitled	Not justified/proven. Special Damages must be specifically proved. There was no evidence adduced by the Plaintiff to prove this claim of RM213,600-00 as "cost of travel expenses". It is also not justified to claim cost of travel expenses which are expenses that everybody bringing a child to hospital will incur.
5.	the cost of purchasing a suitable vehicle	109,244-00	Not entitled	Not justified/proven. The Plaintiff's father's car was used for himself as well as for his whole family. Special Damages must be specifically proved. There was no evidence adduced by the Plaintiff to prove this claim.

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6.	the cost of purchasing suitable accommodation	586,686-00	Not entitled	Not justified/proven. In any event, the Plaintiff's family required accommodation to live in. Special Damages must be specifically proved. There was no evidence adduced by the Plaintiff to prove this claim.
7.	the cost of modifications to accommodation	13,100-00	Not entitled	Not justified/proven. Special Damages must be specifically proved. There was no evidence adduced by the Plaintiff to prove this claim.
8.	the cost of equipment and appliances	112,590-00	Not entitled	Not justified/proven. Special Damages must be specifically proved. There was no evidence adduced by the Plaintiff to prove this claim.
9.	the cost of special food, vitamins and nutritional supplements	200,200-00	Not entitled	**RM118,000.00 was awarded, i.e. for 118 months.** The Plaintiff did not have any "special food". The same expenses would have been payable, in any event, even if the Plaintiff was a normal baby, for at least 36 months. Hence, 154months less 36 months x RM1,000 per month: 118 months x 1,000 = RM118,000
10.	the cost of daily necessities such as diapers, wipes, creams, feeding tubes, syringes, etc	261,800-00	Not entitled	**RM94,400 was awarded, i.e. for 118 months.** The same expenses would have been payable, in any event, even if the Plaintiff was a normal baby, for at least 36 months. Hence, 154months less 36 months x RM800 per month: 118 months x 800 = RM94,400

11.	the cost of vacations	95,000-00	Not entitled	Not Justified. Vacations are not a birth right in Malaysia.
12.	the cost of value of care provided to the Plaintiff by his family members and others	462,000-00	Not entitled	**RM231,000.00 was awarded for the whole 154 months.** 154months x RM1,500 per month: = RM231,000.00 Evidence shows that the Plaintiff was cared for by his maternal grandparents. RM1,500 per month solely for this item is fair.
13.	the cost of obtaining an order for pre-action discovery of medical records	10,000-00	Not entitled	RM10,000.00 was allowed as claimed.
	Total Special Damages		-	**RM458,400.00 awarded**

A B C D E F G H I

No.	Item	Plaintiff (RM)	Defendants (RM)	Judgment& Reasons for disputed items (RM)
C.	**Pre-trial Damages** (from the date of the filing of the claim, 11 January 2023 to the Plaintiff's 15th birthday on 11 February 2025 (25 months)			
14.	the cost of hospital and medical expenses	11,500-00	Not entitled	Not proven. The Plaintiff failed to adduce evidence to prove. As the Plaintiff's mother is working in Hospital Kuala Lumpur, the Plaintiff (as an OKU) has been receiving free treatment at government hospitals most of the time.
15.	the cost of travel expenses	6,900-00	Not entitled	Not proven. The Plaintiff failed to adduce evidence to prove. After writ filed, such claims should be strictly proved.
16.	the cost of equipment and appliances	4,600-00	Not entitled	Not proven. The Plaintiff failed to adduce evidence to prove. After writ filed, such claims should be strictly proved.
17.	the cost of special food, vitamins and nutritional supplements	2,300-00	Not entitled	**RM2,300.00** was allowed as claimed.
18.	the cost of daily necessities such as diapers, wipes, creams, feeding tubes, syringes, etc	11,500-00	Not entitled	**RM11,500.00** was allowed as claimed.

19.	the value of care provided to the Plaintiff by his family members and others	69,000	Not entitled	**RM37,500.00 was allowed for the whole 25 months.** RM1,500 per month solely for this item is fair. RM1,500 x 25 months = RM37,500.00
	Total Pre-trial Damages		–	**51,300.00**
	Future General Damages			
No.	**Item**	**Plaintiff**	**Defendants**	**Judgment& Reasons for Disputed Items**
	Life Expectancy of the Plaintiff	**44**	**25**	Please refer to the paragraphs above for my reasons in ruling that this Court ought to assume that the Plaintiff will live till the **age of 29.**
	Multiplier	**30** (calculated based on a life expectancy of 44, minus the Plaintiff's current age of 14)	**8** (calculated based on a life expectancy of 25, minus the Plaintiff's current age of 14, minus 1/3 for contingencies)	**14** (calculated based on life expectancy of 29 minus the Plaintiff's current age of 15) **No deduction was made for contingencies.**
No.	**Item**	**Plaintiff** **(RM)**	**Defendants** **(RM)**	**Judgment & Reasons for Disputed Items** **(RM)**

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D.	Future General Damages (Medical and Rehabilitation)				
20.	the cost of consultation with rehabilitation physician	**22,500-00** (250-00 per visit, 3 times per year for 30 years)	Not entitled (alternatively, 30% deduction from the Plaintiff's proposal)		**10,500.00** The Plaintiff is 15 years old and there was no claim made for this item earlier, neither under Special Damages nor under Pre-trial Damages. That was, on a balance of probabilities because the reality is that there is no need for such consultation with any "rehabilitation physician". Even if there is/was such a need, the Plaintiff is entitled to free consultation in government hospitals. Be that as it may, this Court decided to give the Plaintiff the benefit of the doubt and awarded RM250 per visit, thrice a year for 14 years. (RM250 x 3 x 14 = RM10,500.00
21.	the cost of consultation with paediatric neurologist	**30,000-00** (250-00 per visit, 4 times per year for 30 years)	Not entitled (alternatively, 30% deduction from the Plaintiff's proposal)		**10,500.00** The Plaintiff is 15 years old and there was no claim made for this item earlier, neither under Special Damages nor under Pre-trial Damages. There is no future need for consultation with any "paediatric neurologist" as he has passed the age of seeing child specialists. Even if there is/was such a need, the Plaintiff is entitled to free consultation in government hospitals. Be that as it may, this Court decided to give the Plaintiff the benefit of the doubt and awarded RM250 per visit, thrice a year for 14 years (RM250 x 3 x 14 = RM10,500.00

22.	the cost of consultation with paediatric orthopaedic surgeon	**22,500-00** (250-00 per visit, 3 times per year for 30 years)	Not entitled (alternatively, 30% deduction from the Plaintiff's proposal)	**10,500.00** The Plaintiff has passed the age of seeing child specialists. Be that as it may, this Court decided to give the Plaintiff the benefit of the doubt and awarded RM250 per visit, thrice a year for 14 years (RM250 x 3 x 14 = RM10,500.00
23.	the cost of dental consultation with special needs dentistry	**18,000-00** (300-00 per visit, 2 times per year for 30 years)	Not entitled (alternatively, 30% deduction from the Plaintiff's proposal)	With respect, not entitled. The Plaintiff does **not** use his teeth or mouth to eat. In any event, he is entitled to receive free treatment in Government dental clinics.
24.	the cost of physiotherapy	**2,400-00** (200-00 per visit, 3 times per week for the first month) Then **72,000-00** (200-00 per visit, once a month for 30 years)	Not entitled (alternatively, 30% deduction from the Plaintiff's proposal)	Not entitled In any event, the Plaintiff is entitled to receive free treatment in Government hospitals as a Orang Kurang Upaya.
No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment (RM)**
26.	the cost of home visits – occupational therapist	**6,000-00** (200-00 per visit, once a year for 30 years)	Not entitled	**Not required as the Plaintiff is unable to perform any physical activities**

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						Not necessary. It is in evidence that the Plaintiff's diet is milk (Pediasure), for which this Court decided to award a sum of **nearly RM300,000**, based on RM1,760.00 a month for the next 14 years, **to be paid upfront to the Plaintiff**.
	27.	the cost of dietitian	**12,000-00** (200-00 per visit, 2 times per year for 30 years)	Not entitled		Not entitled. Plaintiff is entitled to free treatment in government hospitals as has been the case all these years.
	28.	the cost of hospital admission	**10,000-00**	Not entitled		Not entitled. Plaintiff entitled to free treatment in government hospitals as has been the case all these years.
	29.	the cost of spine orthopaedic surgeon for scoliosis surveillance	**15,000-00** (250-00 per visit, 2 times per year for 30 years)	Not entitled		**RM20,000.00.** RM20,000.00 may be payable for such implant in a Government Hospital. Even though such implant may not be necessary, this Court is giving the Plaintiff the benefit of doubt by awarding it.
	30.	the cost of surgical needs: Tendon releases or osteotomy for limb contracture - Spine stabilization for scoliosis	**20,000-00** **100,000-00**	Not entitled		

E.	**Future General Damages (Medicines)**			
No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment& Reasons for Disputed Items (RM)**
31.	Botolinum toxin (botox)	270,000-00 (1,500-00 per vial, 3 vials per injection, 2 times per year for 30 years)	Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
32.	Oral Paracetamol (1g PRN)	6,552-00 (4-20 per week for 30 years)	Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
33.	Vitamin C (500 mg)	16,380-00 (546-00 per year for 30 years)	Not entitled	**RM2,555.00** 0.50 per day 182.50 per year x 14 = 2,555.00 Vitamin C (500mg per day) does not need to cost RN.050 per day. Be that as it may, this Court decided to give the Plaintiff the benefit of the doubt and awarded it.
34.	Vitamin D3 (1000 iu)	21,600-00 (720-00 per year for 30 years)	Not entitled	Award for Calcium is allowed. Common for Calcium supplements to include Vitamin D3

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	35.	Calcium	45,000-00 (1,500-00 per year for 30 years)	Not entitled	**RM2,555.00** Calcium + Vit D3 0.50 per day 182.50 per year x 14 = 2,555.00
	No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment & Reasons for Disputed Items (RM)**
	36.	Pneumococcal (single dose)	120-00	Not entitled	It is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
	37.	Influenza A	1062-00 (35-40 per vial, once every year for 30 years)	Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
	38.	Syrup Epilim (300mg)	720,000-00 (2,000.00 per month for 30 years)	Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
	39.	Syrup Chloral hydrate (300mg)		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.

40.	T. Nitrazepam (2.5mg)		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
41.	T. Benzhexol (4mg)		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
42.	Scopolamine patch 1 patch every 48 hrs		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment & Reasons for Disputed Items (RM)**
43.	T. Baclofen (10mg)		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
44.	Syrup lactulose (10mls)		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
45.	Ravin enema		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
46.	O.Omeprazole (20mg)		Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.
47.	Domperidone (10mg)	**720,000-00** (2,000-00 per month for 30 years)	Not entitled	If this is necessary, it is provided free of charge in Government hospitals for the Plaintiff who is a OKU.

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F.	Future General Damages (Care and Assistance)				
48.	the cost of respite care	**144,000-00** (4,800-00 per month for 30 years)	(5,000-00 once every 2 years)	**RM67,200.00** Once a year for 14 years 4,800 x 14 = 67,200.00	
	No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment & Reasons for Disputed Items (RM)**
49.	the cost of hiring **one nurse** calculated at the rate of RM25 per hour for 8 hours per day	**2,184,000-00** (1,400-00 per week x 52 weeks for 30 years)	Not entitled Alternatively, the cost of hiring one maid (2000-00 per month)	**RM 537,600.00** RM 20/hour x 8 hours x 5 days = RM 3,200 per month x 14years = 537,600.00	
50.	the cost of hiring **a maid**	**900,000-00** (2,500-00 per month for 30 years)	Not entitled	**RM168,000.00** (2,000 x 12 x 14years = 336,000.00) 50% is allowed because the maid will serve the whole family of 4 persons, not just the Plaintiff. 336,000.00 x ½ = RM168,000.00	

51.	Add: the **cost of maid agency fees** and other expenses i.e, immigration charges and levies, medical examination fees, processing fees, including stamping fee, airport clearance fee, etc	**300,000-00** (20,000-00 per year for 15 years)	Not entitled	Not entitled and unjustified because the maid will serve the whole family. The Plaintiff's claim is for RM20,000.00 per year. Every household in Malaysia who wishes to hire a maid would have to pay maid agency fees. It is not an expense specially for the Plaintiff.
52.	the accommodation and living expenses and utilities for carers	**270,000-00** (750-00 per month for 30 years)	-	Not entitled. Every household in Malaysia who wishes to hire a maid would have to provide the maid with accommodation within the house.
No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment & Reasons for Disputed Items** **(RM)**
53.	the accommodation and living expenses for the Plaintiff after attaining the age of majority of 18 years	**780,000-00** (2,500-00 per month for 26 years)	Not entitled	Not entitled. Plaintiff will continue staying with his parents. It is common in Malaysia for children who are single to continue living with their parents
54.	the cost of counseling for parents	**7,500-00** (250-00 per session per year for 30 years)	Not entitled	No evidence of any counselling being required over the past 15 years for the parents who had gone on to have a second child after the Plaintiff was born.

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G.	Future General Damages (Equipment)				
55.	the cost of purchasing Hi-Lo Double Fowler hospital bed	**16,500-00** (5,500-00 x 3 purchases)	4000-00 once every 5 years		**RM16,500.00** **(Allowed as claimed)**
56.	the cost of purchasing table for placement of medications	**1,800-00** (300-00 x 6 replacements)	Not entitled		**RM900.00** (300 x 3)
No.	**Item**	**Plaintiff** **(RM)**	**Defendants** **(RM)**		**Judgment & Reasons for Disputed Items** **(RM)**
57.	the cost of purchasing positioning wedges	**3,000-00** (300-00 x 10 replacements)	300-00 once every 3 years		**RM1,500.00** 5 replacements should be more than sufficient over the next 14 years (300 x 5 replacements)
58.	the cost of purchasing orthotic device	**3,000-00** (200-00 x 15 replacements) Alternatively, **35,000-00** (3,500-00 x 10 replacements)	200-00 once every 2 years		**RM1,400.00** 7 replacements should be more than sufficient over the next 14 years (200 x 7)
59.	the cost of purchasing exercise mat	**6,000-00** (1,000-00 x 6 replacements)	1,000-00 once every 5 years		**RM3,000.00** An exercise mat does not cost as much as RM1,000. Even if it does, 3 replacements are more than sufficient over the next 14 years

				(1,000 x 3)
60.	the cost of purchasing tilt-in-space customized seating system wheelchair	**36,000-00** (6,000-00 x 6 replacements)	4,000-00 once every 5 years	**RM12,000.00** (4,000 x 3) A wheel chair (even a tilt-in-space one) does not cost as much as RM4,000. Even if it does, 3 replacements should be more than sufficient over the next 14 years
61.	the cost of purchasing portable ramps	**4,500-00** (1,500-00 x 3 replacements)	1,000-00 once every 5 years	**RM3,000.00** Portable ramp does not cost as much as RM1,000. Even if it does, 3 replacements should be more than sufficient over the next 14 years (1,000 x 3 = RM3,000)
No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment & Reasons for Disputed Items (RM)**
62.	the cost of purchasing powered tilt table	**36,000-00** (12,000-00 x 3 replacements)	Not entitled	**RM24,000.00** A powered tilt table is actually not necessary as the Plaintiff does not sit up to eat. Further, it does not cost as much as RM12,000. Even if it does, 2 replacements should be more than sufficient over the next 14 years (12,000 x 2 = RM24,000)
63.	the cost of purchasing electric hoist	**78,000-00** (13,000-00 x 6 replacements)	10,000-00 once every 10 years	**RM20,000.00** A simple electric hoist does not cost RM13,000. The Defendant's figure of RM10,000 is more reasonable. 2 replacements should be more than sufficient over the next 14 years (10,000 x 2 = 20,000)

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64.	the cost of purchasing reclining shower chair	**18,000-00** (1,800-00 x 10 replacements)	**18,000-00** (1,800-00 x 10 replacements)		**RM9,000.00** Assuming that a shower chair costs RM1,800.00, 5 replacements should be more than sufficient over the next 14 years (1,800 x 5)
65.	the cost of purchasing alternating pressure mattress	**6,000-00** (600-00 x 10 replacements)	**6,000-00** (600-00 x 10 replacements)		**RM3,000.00** Assuming that such a mattress costs RM600.00, 5 replacements should be more than sufficient over the next 14 years (600 x 5)
66.	the cost of purchasing consumables for personal hygiene care (gloves, emollients, electric toothbrush, clean sheets, hypafix, diapers)	**540,000-00** (1,500-00 per month for 30 years)	400-00 once every month		**RM134,400.00** **The Plaintiff's claim for RM1,500 per months is grossly excessive.** Hypafix is just a plaster. RM800 per month would be more than sufficient. There was no evidence of the Plaintiff having spent so much per month over the past 15 years. (800 x 12 x 14years = RM134,400.00)
No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**		**Judgment & Reasons for Disputed Items (RM)**
67.	the cost of purchasing consumables for PEG Tube (Mic-key gastrostomy feeding	114,000-00			**RM56,000.00** (1,000 x 4 x 14)

	tube) with extensions and dressing sets	(3,800-00 per year for 30 years)	1,000-00 once every 6 months			
68.	the cost of purchasing milk (pediasure)	633,600-00 (1,760-00 per month for 30 years)	4 cans per month (RM 90 x 4) = 360 once every month	**RM295,680.00** (1760 x 12 x 14)		
69.	the cost of purchasing suction machine	30,000-00 (1,000-00 per year for 30 years)	500-00 once every year	**RM7,000.00** Such a suction machine is just a simple pump with rubber hose. Figure of RM500 suggested by the Defendant is more reasonable. If to change every year for 14 years = 500 x 14= RM7,000		
70.	the cost of purchasing digital ear thermometer	**1,600-00** (200-00 x 8 replacements)	200-00 once every 5 years	Not entitled. Every family with a child will have to buy such a thermometer.		
71.	the cost of purchasing pulse oximeter	**2,800-00** (350-00 x 8 replacements)	350-00 once every 5 years	Not entitled. It is common for families with children or old folks to buy such an oximeter.		

A B C D E F G H I

No.	Item	Plaintiff (RM)	Defendants (RM)	Judgment & Reasons for Disputed Items (RM)
72.	the cost of purchasing digital blood pressure machine	**2,400-00** (300-00 x 8 replacements)	300-00 once every 5 years	Not entitled. It is common for families to buy such a blood pressure meter
	Future General Damages **(Others)**			
H.				
73.	the cost of purchasing disabled-friendly MPV	Modified MPV **450,000-00** (150,000-00 x 3 replacements) Wheelchair Lift and Anchoring System **90,000-00** (30,000 x 3 replacements)	Not entitled Alternatively, **100,000-00** (one-time purchase)	**RM60,000.00** (30,000 x 2 for wheelchair lift & Anchoring System) There is no evidence of the Plaintiff's family having incurred such expenses over the past 15 years.

74.	the cost of purchasing disabled friendly home	413,344-00	Not entitled	Not entitled. The Plaintiff's parents, just as any other Malaysian couples, have to provide a home for themselves. The Plaintiff's parents have a home for them, the Plaintiff and his younger brother.
No.	**Item**	**Plaintiff (RM)**	**Defendants (RM)**	**Judgment (RM)**
75.	additional cost of holidays	**150,000-00** (5,000-00 per year for 30 years)	Not entitled	Holidays are not part of the birth rights of Malaysians. Therefore, not entitled.
76.	the value of care provided by A's family members	**720,000-00** (2,000-00 per month for 30 years)	Not entitled	Not entitled. There will be duplicity if to be allowed because an award of **RM 537,600.00** nursing care has been allowed for 8 hours a day have been allowed. Over and above that, an award of **RM168,000.00** is also allowed to hire a fulltime maid.
	Total Future General Damages			**1,476,790.00**

TOTAL DAMAGES AWARDED: RM2,286,490.00

I H G F E D C B A

No.	Item	Plaintiff (RM)	Defendants (RM)	Court (RM)
I.	**Costs**			
77.	getting-up fee for the liability and quantum proceedings	350,000-00	80,000-00	**100,000.00**
77.	out-of-pocket expenses	26,429-95		**26,429.95**
J.	**Interest**			
78.	interest on special damages from the date of the incident, 11 February 2010 to the date of decision	5%	Not entitled	**5%** interest on **Special Damages** from **the date of the writ**, 11 January 2023 to the **date of payment**
79.	interest on general damages for pain and suffering and loss of amenities of life and on aggravated damages from the date of service of the writ, 11 January 2023 to the date of decision; and	8%	Not entitled	**5%** interest on **General Damages for pain and suffering** and loss of amenities of life from the **date of the of the incident, 11 February 2010** to the date of payment

80.	interest on the judgment sum, including costs and pre-judgment interest, from the date of judgment to the date of payment.	5%	Not entitled	**5%** interest on **Pre-trial Damages & Future General Damages** from **the date of judgment 6th May 2025** to the **date of payment**

Order accordingly.

Reported by Dzulqarnain Ab Fatar